

acquit and discharge the Accused without calling him to enter upon his defence.

As my decision here would involve potential repercussions on several other pending cases in the country involving cannabis, under the governing definition of cannabis, I have taken pains to ensure that this judgment and the notes of evidence are made available to the DPP forthwith today so as to expedite an appeal by the Public Prosecutor, if so decided.

PUBLIC PROSECUTOR

v.

JAMLONG MANMOOL

HIGH COURT, BRUNEI

DATO' SIR DENYS ROBERTS CJ

[CRIMINAL TRIAL NO. 4 OF 1992]

22 SEPTEMBER 1992

CRIMINAL LAW: Rape - Section 375, Penal Code - Consent - Admission of defendant of sexual intercourse with complainant - Whether with consent: aggravated rape - Section 376(2), Penal Code - Whether case of aggravated rape: sentence - Ordinary rape - Appropriate sentence in the circumstances.

EVIDENCE: Burden on prosecution - Whether discharged - Corroboration - Whether sufficient - Section 157 Evidence Act.

d The defendant was charged under s. 375 of the Penal Code with rape of the complainant. The complainant alleged that on the night of 26 April 1992, when she was walking back home from the house where the defendant lived, the defendant had waylaid her and had dragged her into the jungle and raped her. She had struggled and shouted for help at first, but had to keep quiet when the defendant threatened to take her deeper into the jungle and kill her.

e The complainant reported the incident to the police on 27 April, 24 hours after the incident, she was examined by a doctor on 28 April, who saw a bruise on her thigh. The doctor took three smears and sent them for analysis. The shorts worn by her at the time of the incident too were sent for forensic examination. Swabs of semen found on the shorts were taken. Forensic evidence established that the complainant had had sexual intercourse within 48 hours before the smears were taken. The semen found in the crutch of the shorts were matched with the profile of blood taken from the defendant, and the semen and the blood were found to have come from the same person.

f The defendant at first denied in court having sexual intercourse with the complainant on the night of 26 April 1992, though admitting to sexual intercourse with her on two other occasions, before the incident, but later admitted to having sexual intercourse with the complainant on the night in question, claiming that it was with the consent of the complainant.

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Held:

[1] The defendant must be convicted of rape. Though there was little corroboration of the complainant's story that she had refused her consent, nevertheless, she was a witness of truth, whose evidence was credible and reliable.

[2] The case was not a case of aggravated rape, within s. 376(2). To be convicted of aggravated rape, the defendant must be proved to have voluntarily caused hurt to the complainant or of having put her in fear of hurt or death. Though the complainant had been bruised, this did not justify a conviction under the subsection as an intention to kill could not have been made out. Any threat to take the complainant deeper into the jungle did not fall within the section. So no such act to hurt or put in fear of death or hurt had been committed, as to make it necessary to consider whether the act was committed in order to commit or facilitate the commission of rape.

[3] The defendant must be sentenced to 6 years imprisonment and 6 strokes. Previous cases, which made it clear that rape is always a serious matter, suggest that if there are no aggravating circumstances, other than the rape itself, sentence of 5 to 6 years are commonly imposed.

[Accused convicted.]

Cases referred to:

DPP v. Kilbourne [1973] AC 729 (**fol**)
Chiu Nam Heng v. PP [1966] 31 MLJ 40 (**refd**)
PP v. Abdul Rahman & Ors. [Criminal Trial No. 7 of 1988] (**fol**)

Legislation referred to:

Criminal Procedure Code, s. 221
 Evidence Act, s. 157
 Penal Code, ss. 375, 376(2)

For the public prosecutor - Alice Khan

For the defendant - Defendant in person

JUDGMENT**Denys Roberts CJ:***Preliminary*

The defendant, Jamlong Manmool, faces one charge, as follows -

Commission of an offence against s. 375 of the Penal Code.

That you on the 26 April 1992, at about 9 pm, in the jungle near Simpang 144, Jalan Kiarong,

a Beribi, Brunei Darussalam, committed rape on Miss X (name given) contrary to s. 375 of the Penal Code.

This charge was read and explained to the defendant, who pleaded not guilty to it.

b General

I remind myself that, in a criminal trial, the burden lies upon the prosecution, which must establish, beyond a reasonable doubt, every element of a charge which is brought. This burden lies on the prosecution throughout the case and does not change.

c The only charge is one of rape, which is defined in s. 375 of the Penal Code (PC) as being committed when a man has sexual intercourse with a woman in one of the five circumstances which are set out in the section. These include sexual intercourse with a woman -

- d*
- (1) against her will; or
 - (2) without her consent; or
 - (3) with her consent when this was obtained by putting her in fear of death or of hurt.

e Section 375 P.C., according to the first explanation which is attached to that section, states that it is sufficient to constitute rape if there has been some penetration of the woman by the male organ, whether or not this is followed by an ejaculation inside or outside the woman. The fact of ejaculation is not conclusive. It may be absent in the case of a rape.

f Corroboration

On a charge of rape, corroboration of the evidence of the complainant is required, and I have to direct myself in the manner prescribed by *DPP v. Kilbourne* [1973] AC 729. Having warned myself that it is dangerous to act on the evidence of the complainant alone, I may nevertheless do so, if I am satisfied that her evidence is so credible that I am sure of the guilt of the defendant and am prepared to act on the complainant's testimony alone - see also *Chiu Nam Hong v. PP* [1966] 31 MLJ 40.

h Complaints which have been made by a victim in a sexual case do not, in English law, amount to corroboration of her evidence. Under that system, her complaints amount to no more than what is called evidence of "the consistency of her conduct". In Brunei, however, such evidence may amount to corroboration, see *PP v. Abd. Rahman & Ors.* (criminal trial no. 7 of 1988).

Section 157 of the Evidence Act is in general terms and provides that the evidence of a witness may be corroborated by an earlier statement by that witness at or near to the time when the fact took place. In the Abdul Rahman case, it was decided that evidence of a complaint is admissible as corroboration if the complaint was made as soon as can reasonably be expected after the incident occurs.

The evidence of Suay Jinapa (PW11) is to the effect that Miss X visited the house of Jamlong for dinner on the evening of 26 April 1992. According to Suay, Miss X had visited Jamlong many times before. After dinner, she said that she wanted to go home. Sulvan told her that she would have to wait, so she said she would walk back.

About ten minutes later she came into the room and slapped him and Sulvan, saying that she had been raped by Jamlong. The latter was in the room when she said that he had raped her. I accept this complaint by Miss X as amounting to corroboration of her evidence that she was raped.

The same limitation, however, does not apply to a former statement made by a witness to an "authority legally competent" (which includes a police officer) to investigate the fact. Such a statement is admissible to corroborate the evidence of Miss X.

The complaint made by Miss X to the police, which was reduced to writing, is capable of amounting to corroboration of her evidence, to the extent to which it can be said that the complaint confirms her testimony.

The complaint made by Miss X to the police at 2300 on 27 April about 24 hours after the incident, was that she had been walking home when "a man of Thai nationality whom I knew by the look but didn't know his name dragged me into the jungle and raped me". This is also corroboration of her story, but it is, as was her first complaint to Juay, from her and from an independent source. I do not think that any corroboration of her evidence can be derived from the bruise found by Dr. Thien on Miss X's left thigh, since the Doctor believed that any pressure could have caused the injury, possibly a hand.

Witnesses

I have attempted to summarize only part of the evidence of the witnesses. This should not be

a taken to indicate that I have only taken into account, in reaching my conclusions, that part of the evidence which is specified in those summaries. I have given full and proper weight to all the admissible evidence put before me, verbal and documentary, whether or not it is also mentioned in them.

b I have also considered, and given appropriate weight, if they are not mentioned specifically, to any inconsistencies in the evidence of a witness or between the testimony of two or more witnesses, before reaching any conclusion.

c Forensic Evidence

This was of some significance. Mrs. Tan of the Singapore Department of Scientific Services, (PW1) examined a number of exhibits which were sent to her for examination.

d Among these was a pair of green shorts, worn by Miss X at the time of the incident complained of. Mrs. Tan found, "semen in the crutch of the shorts." There was sufficient semen for her to match it with the profile of the blood taken, with his permission, from the defendant.

e The probability that another person would have the same profile is about 1 in 38. It is therefore likely, though this is not conclusive, from the DNA test, that the semen and the blood came from the same person.

f It follows that the defendant is likely to have deposited his sperm onto the shorts worn by Miss X, though the tests carried out by Mrs. Tan do not show whether the intercourse was voluntary or obtained by force.

g Dr. Telisinghe (PW3) received swabs taken by Dr. Thien from Miss X at 0230 on 28 April 1992, which showed that, by reason of the presence of spermatazoa in the smears, Miss X had had sexual intercourse within 48 hours before the smears were taken. This would fall within the period when the rape was alleged.

PW2 Daranee Prasertsit

h She has worked in Brunei for about five years as a maid, living in the house of her employer Mr. Neo. Sulvan, Somrak, Kete and another man took her by jeep to Daeng's place on the evening of 26 April 1992. That is the nickname of the man in the dock.

i She went there because her friends were doing so. The jeep was driven by Somrak, who worked

for the same employer, who has an aluminium foundry. Daeng was not there when she arrived.

After watching a Thai movie, she was taken by Sulvan to look for Suradit, who was not there, so they returned to Daeng's house.

She waited in the jeep while they had dinner as she was not feeling well. She went to the room and said she wanted to go home but they did not take her. She went back to the jeep and later to the room. Sulvan and Kete were eating. She asked them to take her home. When they said she must wait she was angry and started walking home. She did not notice if Daeng was in the room then.

After she had been walking for about five minutes she heard somebody call her. When she looked back it was Daeng. He said he would accompany her, but she said she did not want that and asked him to return to his room.

He did not do this, but put his hand on her shoulder. She pushed it away and told him not to do that again.

When he tried to do it again she scolded him and he suddenly picked her up and said he would carry her into the jungle. He said "I am going to pull you into the jungle."

She shouted for help as he dragged her into the jungle, where he dumped her on the ground and moved himself on her body.

She said "please don't do like this to me." He did not listen to her, so she started to shout again. He punched her on her left thigh, and said "if you don't stop shouting I will pull you deeper into the jungle." She was scared, so she kept quiet. She tried to speak nicely to him but he did not stop. So she scolded him but he did not listen.

He pulled down her shorts. He did not get them off as she struggled. He warned her that if she did not stop struggling he would take her further into the jungle.

She kept quiet because "I was afraid he might kill me". He pulled her shorts and pants down her legs and took off his shorts and started to rape her.

He started to put his male parts into her parts. He did not succeed at first because she did not let him. She struggled for about ten minutes. He scolded her and told her "that he would take

a me into the jungle and kill me". She was very scared and let him to do what he wanted to her.

It was very painful in her parts. The defendant put his penis inside her. That was why it was painful and also she was struggling. She asked him to stop but he went on raping her.

b He went on raping her until he stopped and got up. He put on his trousers. She did not know if he ejaculated inside or outside her. She did see any semen or feel anything.

c She went back to his room. Daeng followed and tried to stop her going to his room, saying "you don't have to go there. Just wait here and I will call Sulvan to pick you up."

d She did not listen and went to his room, where she slapped Sulvan and Kete for not taking her home. She cried and told them that she had been raped by Daeng. They took her to the jeep and drove her home.

e Daeng went with them in the jeep. She asked Sulvan to chase Daeng away but Daeng refused to go. Near her house, Daeng got out of the jeep and came to the window. She kicked him when he put his face through the window.

f Daeng followed the jeep to the house. She asked Sulvan to get rid of him but he would not go, but followed her on foot to the house. So Sulvan put her in his room and locked the door. She stayed there that night.

g She told Sulvan about the rape next day but he said nothing. About 2100 she asked Sulvan to take her to Suradit, which he did. She told Suradit what had happened and asked him to get someone to hit Daeng. Suradit did not agree and told her to report it to the police. Suradit took her to see a Malay, whose name she does not know, and they went to a police station.

h At the C.P.S., she showed a police lady where she had been punched and made a complaint that she had been raped. There was also a scratch on her arm which she got when she was trying to struggle.

i The statement is correct in that she said she did not know Daeng's real name, only his nickname. She had met him before. She went to Daeng's room with the police, pointed him out and they arrested him.

j She was taken to Ripas, examined by an Indian doctor who took swabs from her and later returned to give blood, hair and saliva samples.

She washed the pants she was wearing at the time but not the shorts. She did not report the rape to her employer as she was still confused and did not know what to do.

She did not know Daeng well. He was a friend of Sulvan and had been to her house to visit Sulvan. Daeng had not shown any interest in her before that night. She did not consent to what he did, or like it.

She never had sexual intercourse with him before that night, or asked him to marry her. She could not think why he had raped her.

The defendant was not her boyfriend in Brunei. She used to have one but he has gone back to Thailand.

When she left the house by herself, Daeng came after her. She was wearing the green shorts as she did not have a chance to change them before she went to Daeng's room.

She is sure that it was Daeng who raped her in the jungle. She had never had sex with him before and did not consent to what he did to her.

She went back to Daeng's room after the rape, because she thought he might catch her again if she tried to go home. Daeng tried to stop her going to his place. She did not run as it was very dark and there were no street lights. She could see Daeng's face and recognized his voice.

When they got back to his room, he asked her not to tell his friends about the incident, but she did so, as soon as she entered the room.

When they took her home in the jeep, Daeng was in the back of it, though she did not know why. He tried to speak to her but she did not reply. She had no quarrel with Daeng before. She never told him that she wanted to marry him.

She had never kissed or embraced him, or encouraged him. She had never had sex with him before that day. She did not have sex at Chinese New Year at her employer's place, twice in the one day with Jamlong. Chinese New Year was on 4 and 5 February 1992.

The first time she had sex with the defendant was on 26 April 1992, and it was not with her consent.

PW3 Dr. P.U. Telesinghe

He received three swabs from Dr. Thein on 28 April 1992. The smear for spermatazoa showed

a many wine present. The smear for phosphate was high and for sexual diseases was negative.

The smears established that Miss X had sexual intercourse within 48 hours before the smears were taken.

b On another date, he took samples of blood and saliva from Miss X and Jamlong Manmool. He handed them to Ins. Dayang.

PW4 Dr. Nwe Nwe Thein

She examined Miss X on 28 April at 0230. She saw a bruise on her thigh, which she thought was the result of a struggle or pressure on the thigh. She could not say if it had been caused by a punch.

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She took three smears and sent them for analysis to Dr. Telisinghe.

PW5 Ins. Dayang Bte Hj Omar

d On 27 April 1992, at about 2300 Miss X came to the crime room at CPS and complained that she had been raped. Her English was not good, but through a Thai man she made this clear. She said she would take them to where the defendant lived in Beribi.

e She received three of the exhibits (Jamlong's clothes) from Ins. Ariffin, four specimens from Dr. Telisinghe, and was handed four pieces of clothing by Miss X. All were labelled by her and given to Ins. Zulkifli to take to Singapore on 4 June. She cannot now remember where the two specimens of hair were from.

f When Miss X made her complaint to the police, she did not give the defendant's name. Miss X said that the slippers in photo 1 were hers. She gave them back to her.

g The slippers were found about 30 feet from the road. She found them about 100 yard from where Jamlong lives. There was street lighting, so that you could see a person coming close to you.

PW6 Ak Ibrahim Bin Pg Hj Damit

h Nuphep came to his house and told him that a friend of his had been raped. She wanted to go to a police station, so he took them both there where he informed a police officer that the girl had been raped.

PW7 Nuphep Nemparya

i At about 2130 on 26 April Miss X, Sulvan and another friend came to see him. She told him that she had been raped by a Thai man and

asked him to beat up the man who did it, but he did not agree. She told him about the bruise on her thigh.

He took her to see Ak Ibrahim, and asked him to take them to the police station, where Ak Ibrahim told the police about the incident.

Miss X was the girlfriend of a man friend of his who has gone back to Thailand. When she came to see him she was crying. He had not seen this before. She said that the man who raped her was a friend of Sulvan, but she gave no name.

PW8 S/SGT Ahad Bin Rendah

He recorded the complaint of Miss X, who is 43. She came with Nuphep (PW7) and Ak Ibrahim (PW6). Nuphep is familiar with Thai and Malay and explained to her what had been recorded.

He went to locate a Thai national at Lot 14318, 135, Kampong Beribi, as Miss X told them that the man who raped her lived there.

When they got there, Miss X said that the defendant, Jamlong, was the man who had raped her.

PW9 INS Pg Zulkifli Bin Pg Salleh

He received all the exhibits from Ins Dayang on 4 June and took them to Singapore on 8 June.

PW10 INS Ariffin Bin Hj Jafaruddin

He was on duty at CPS at about 2215 when Miss X came to the police station with Nuphep (PW7) and Ak Ibrahim (PW6). Miss X reported that she had been raped as she was returning home.

They went to Kampong Beribi, where Miss X pointed out Jamlong as the person who raped her. Jamlong was taken to Ripas for a medical examination. He collected Jamlong's clothing and gave it to Ins. Dayang.

When he told Jamlong that he was accused of raping Miss X, he denied it.

PW11 Suay Jinapa

He knew Jamlong Manmool as Daeng, which is his nickname. He went to Daeng's room on 26 April about 0900. In the evening Miss X asked Sulvan to take her home but Sulvan told her to wait until he had finished eating.

She left by herself. He is not sure where Daeng was. A few minutes later, she returned to the room and slapped him and Sulvan, crying "Why didn't you help me? I was raped by

a Jamlong Manmool." Jamlong was in the room when she said this.

He did not ask Jamlong anything as Miss X was crying and it was confusing. Sulvan and Jamlong went in a car with Miss X. She did not consult him. She just spoke to Sulvan.

b He thought Daeng and Miss X were very close, as she came to visit him and he went to see her. She lent money to him. Sulvan is also a good friend of Miss X.

He did not believe Miss X when she said she was raped, as he did not see it with his own eyes.

c PW12 SGT 1007 HJ Ismail Bin Hj Tengah
He took the photographs. (Not called).

PW13 INS Md Suffian Bin Hj Zainal Abidin
He took a statement after notice of warning from Jamlong Manmool.

d He did not use any inducements, violence, threats or promises to obtain it. It was voluntary.

It was recorded in Thai by an interpreter and translated to him in English. He recorded it in English, and read it back. He signed it as correct.

e The defendant did say that he had not done anything to the lady.

PW14 Boon Thong Manmool

He shared a room with Jamlong at Kampong Beribi. On 26 April, he came back after working all day. Suay was working but Sulvan and Daeng and the lady were out.

He went out to buy mangoes. When he came back, the lady was gone. She came in, slapped Sulvan and Suay and said she would get the police to arrest Daeng. He did not ask Daeng why because they had had rows before. He did not want to get involved with her as he did not like her.

g It seemed to him that the lady was a bit drunk as she brought some Thai alcohol that day.

h He had not heard Miss X asking Daeng to marry her. As soon as she slapped Sulvan and Suay, she went out and he did not hear what she said.

i *Statement*
The defendant (Jamlong) made a statement after notice of warning in Thai on 4 May 1992.

It was witnessed by Ins. Suffian, who arranged for the warning to be translated into Thai by Miss Sarowanee, an experienced interpreter, who works in the Thai Embassy and has been present to translate for the benefit of Jamlong throughout his trial.

In this statement, he says that his friends Sulvan, Kete and Song arrived with a lady whom he knew as "Miss Pen". He said that the others were close friends "but not the lady".

About 7 pm after they had eaten dinner, all his friends left, including the lady, and went to Sulvan's camp where they stayed chatting. The lady asked them to look for her brother, so Sulvan and he and the lady went to look for him but did not find him.

Next they went to his room and talked. Kete and Nond were already there. The lady stayed in the car. Sulvan was there also.

After an hour, he asked the lady to come inside the room. She entered and chatted to Sulvan. Then he went to the toilet. When he came out, he found that she was gone. He realized that she had run away. So he ran after her. After running for about 2 kilometres, he caught her up near a water tank and asked her to follow him back to the camp. She said she did not want to do that. So he said he would go back and did not know if she followed him back to his camp or not.

Five minutes after he got back there, she arrived and said "you will be in great trouble. I will report you to the police and ask the police to arrest you."

He thought that she was joking because "I had done nothing to her."

Then she went back with Sulvan to their camp. At about 11.30 pm, on 27 April a police officer arrested him at the camp.

He added, in answer to questions, that he had known Miss X for a little over two months. She had been to his camp about three times and he had been to her employer's house about 20 times.

In this statement, therefore, Jamlong denied that he had done anything to her. From the fact that he had been charged with rape, this can only amount to a denial of the offence or that he made any sexual advances of any kind against her.

a Defence

What is the defence which was put forward by Jamlong, who elected to give evidence, from the witness box, after the choices open to him under s. 221 CPC had been explained to him?

The defendant's full name is Jamlong Manmool. He is 42 and has been working in Brunei for 4 1/2 years. He is married and has a wife and two daughters in Thailand.

He had only known Mrs. Daranee for about two months. He had quarrels with her because she had wanted him to marry her. He had refused to do so. He had seen her up to twice a week at her place. Sulvan must have seen him go there.

That evening, he went out with Miss X and Sulvan. They looked for Suradit. As they could not find him, they came back to his room. She, stayed outside in the car. An hour later, he asked her to come in, which she did. When he came back from the toilet, she was gone. Sulvan told him that she had left, so he followed her. He was worried that she might get into trouble with the police as she was drunk. He was afraid she might tell the police that they were drinking alcohol there.

About 100 yards from his room, he caught up with her. He asked her to go back to his room but she refused and told him to go away. He walked back to his room. She arrived there soon after him.

He had not done anything to her that evening. He had had sex with her on other occasions at her employer's house. She was willing then.

He asked her why she wanted to call the police, but she did not reply.

He did not have any sexual intercourse with her on 26 April. He did not mention that he had had intercourse with her on an earlier date in his statement after notice of warning as the police did not ask him about that.

He did not quarrel with Mrs. Tan's finding that there was semen on the front of Mrs. Daranee's shorts. He had nothing to say, if she asserts that there must have been sex about 26 April. He did not mention in evidence that he had sex with Miss X three days before.

If Dr. Telisinghe's report showed that Miss X had sex within 48 hours before the swabs were taken about 0230 on 28 April he still says that he had sex with her about 23 April and not on 26 April.

He believes that Mrs. Daranee is making up the story because they had quarrels. He cannot think of any other reason.

He agreed that she had a small mark but thinks she made up the story of the bruise against him. He thinks that she has come to court to make a false accusation against him.

There was talk of marriage. He agreed that the false accusation was made because he had decided not to marry her. If he had raped her, there would have been marks on her body, and there were not. Only the day before the incident, she had bought him some oranges and apologised for saying that she was a prostitute.

Consent

The important difference between the evidence of Miss X and that of Jamlong is whether any sex took place on the evening of 26 April 1992. Miss X says it took place without her consent and because she was scared. Jamlong says that he did not do anything, though they had had sex on two previous occasions.

If Miss X is to be believed, she was working as a maid for a Mr. Neo, and had been in Brunei for about five years. She knew Jamlong casually, as she was a close friend of Sulvan, who lived in the same house as he did. She had never had sex with Jamlong before and had discouraged him on the one occasion when he put his hand on her shoulder.

She left the room of Daeng (as everyone called the defendant), and walked home because she was angry with Sulvan for not taking her back. Her evidence is that Daeng followed her, dragged her into the jungle and had intercourse with her there, against her will. According to her, there had been no previous relationship between them.

Daeng did not, in his statement after warning, admit that he had had sex with Miss X. Indeed, he denied that he had "done anything to her". This was in spite of the warning, which was delivered to him at the time, that if he intended to rely on any facts in his own defence, he should mention them, or the court might draw inferences which were adverse to him.

When Mrs. Tan (PW1) tendered her report, the terms of which made it certain that Miss X had sex at about the time alleged and that it was very likely that she had intercourse with him, he admitted that Miss X and he had had sex on

a the evening of 26 April 1992, but insisted that it was mutual.

He added that it was not the first time that they had had sex, as this took place twice in her house at Chinese New Year, with her agreement. This Miss X strongly denied.

b This is, of course, not conclusive, as someone who has had sex with a person before is not deprived thereby of the right to refuse on a future occasion. If I were to believe this allegation, however, it would necessarily throw doubt on the credibility of Miss X as to the rape, since she was firm in her denial that he had never had intercourse with her before, nor had she asked him to marry her, as he asserts.

c Can I accept Jamlong's claim that there was a history of previous sex between them, an assertion which does not accord with his statement after notice of warning.

d It was only, as I find, when he discovered, at the trial, that from the forensic evidence given by Mrs. Tan it was very likely that Miss X had had sex with him on 26 April that he first changed his story, from a denial that he had had anything to do with her, to an assertion that they had had sex before, and that it took place with her consent.

e This was, however, not the version which he gave consistently, even making due allowance for such difficulties of interpretation as may exist.

f In his statement after warning, he denied any intercourse at all on 26 April. Nor did he suggest that he and Miss X had had sex on any other occasion.

g In his questions to Miss X, he alleged that he had sex on two occasions at Chinese New Year, which was 4/5 February 1992, or 2 1/2 months before the incident, and that Miss X consented to this and to intercourse on 26 April.

h In evidence, he said that he "had not done anything to her that evening," but that he did have sex with her at her employer's house, in April, but not on 26. He thinks it was three days before April 26.

i So firstly he first denied any sex; secondly he asserted that he had it at Chinese New Year and on 26 April; thirdly he denied that he had it on 26 April, but admits that he did about 23 April.

In his final speech, Jamlong said that he did not mention his previous relationship with Miss X because he was ashamed. He did not dare ask her if she was drunk. He told different stories because he was afraid. He did not tell her the truth because he was ashamed. When Miss X slapped his friends, he heard her say that he had raped her but he was too afraid to say he had not done so.

I do not believe these excuses, which I find unconvincing. Indeed, I do not believe Jamlong who has, I find, told a series of untruths in an effort to persuade me that he did not have intercourse with Miss X on 26 April, as the forensic evidence clearly supports.

I accept that, notwithstanding the finding of Miss X' slippers at the place of the rape, there is no corroboration of her story of intercourse against her will from a source independent of herself, which is frequently so in cases of this nature.

I also take into account the fact that, with the exception of the bruise, and of some minor scratches on her arms, there were no other marks on her body. She has explained this, to my satisfaction, by saying that she struggled and shouted but that she finally submitted because she was afraid of him, not because she was willing.

His explanation as to why Miss X should fabricate such a story against him is that she had wanted to marry him and that she was so slighted by his refusal that she took measures which would ruin him if they were believed.

Evidence of Miss X

If I do not believe the evidence of Jamlong, this is not an end of the matter, I must still be satisfied that Miss X is herself both credible and reliable. If she is not the fact that Jamlong has told untruths is not sufficient.

Miss X is a woman of 43, a married woman with two children, who has worked in Brunei for the past five years and was in April 1992 a maid. The story which she relates is not inherently improbable. It is understandable that her patience ran out, when Sulvan refused to take her home and that she therefore began to walk back alone. She was followed by Daeng, who explains his interest in her by saying that he was anxious that she might get herself and them into trouble because she had been drinking.

a Whether Jamlong followed her with the intention, at that time, of forcing himself upon her, or whether this motive came into his mind only when he caught up with her may be a matter of speculation. What is established, however on her evidence, is that the defendant took advantage of her on a lonely road, after dark and in a part of the jungle.

b Some corroboration of her story can be gained from her complaint, within a few minutes of the incident, when she entered Daeng's room and in her complaint to the police on the evening of 27 April.

c After her initial complaint, she did not report the matter to the police for about a day. I do not consider that this makes her evidence suspect. She was a Thai national in a foreign country. She did not know where the nearest police station was. She told Sulvan, who made no comment. She asked Suradit to beat up Jamlong. As Suradit did not want to take action himself against the defendant, he insisted that she should make a report to the police.

d There is little corroboration of her story that she refused her consent. Having warned myself that it is dangerous to convict without corroboration, on the unsupported evidence of a complainant alone, I am nevertheless prepared to do so, finding Miss X to be a witness of truth, whose evidence I accept as credible and reliable.

e I convict Jamlong Manmool of the charge of rape brought against him.

Was this an aggravated rape?

Jamlong has, of course, changed his story, at times alleging no sexual intercourse and at times that it took place with Miss X' consent, on 26 April or some other occasion.

f As I have said, I do not accept his version of events and believe that of Miss X. According to her, he picked her up and said he would carry her into the jungle. She cried for help. He threw her to the ground. She said "please don't do this to me". He did not listen, so she shouted, whereupon he punched her on the left thigh, where a bruise was found. He said "if you don't stop shouting I will pull you into the jungle. I was scared because he was about to slap me so I kept quiet."

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After that he tried to pull off her shorts and panties but she continued to struggle. He warned her that if she went on struggling he would pull her into the jungle.

Miss X said "I had no choice as I was afraid he might kill me so I kept quiet." She described how she struggled but he penetrated her. During that struggle he scolded her and said he would take her into the jungle and kill her. She said that she was very scared and let him do what he wanted to do.

She added that she did not consent to what he did and that she did not like it.

If Jamlong is to be convicted of aggravated rape, within s. 376(2) of the Penal Code, he must be proved to have voluntarily caused hurt to her or of having put her in fear of hurt or death.

I do not regard the bruise as justifying a conviction under this subsection, though I accept that it was probably inflicted during the struggle.

As regards the threats to kill, I do not consider that these were made. The threat to take her deeper into the jungle may well have been, but I do not consider that this falls within the section, though it may well have had the effect of making her keep quiet.

As I have found that Miss X was not hurt or put in fear of death or hurt, it is not necessary for me to consider, as I would have to do if I had found otherwise, that the act was committed in order to "commit or facilitate the commission" of rape.

Counsel for the public prosecutor submitted that this was not a case of aggravated rape, within s. 376(2), a submission with which I agree.

Sentence

The maximum sentence which a court can impose for the ordinary rape of which you have been found guilty is 30 years and 24 strokes, though there is no minimum prescribed.

You are aged 41, so that you can obtain no discount for your youth, though I take into account the fact that you have no previous convictions and a family in Thailand to support.

Nor can you expect any deduction from your sentence because of a plea of guilty, which in a

a case of this kind saves the complainant from having to give evidence at a trial on matters of an intimate nature.

b You already knew Miss X, as a friend, even though she was apparently closer to Sulvan, a colleague who has since then returned to Thailand. Yet you took advantage of her and forced yourself upon her.

c It must have been an unpleasant experience for her, to have been carried or dragged into the jungle and made to submit, against her will, to sexual intercourse with you.

c Previous cases, which make it clear that rape is always a serious matter, suggest that if there are no aggravating circumstances, other than the rape itself, sentences of 5 to 8 years are commonly imposed.

d The sentence is one of 6 years and 6 strokes. Any time spent in custody will count towards sentence.

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